

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ISAAC WRIGHT, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:22-cv-4553
)	
DRIVERDO, LLC,)	
)	
Defendant.)	

DECLARATION OF KATHY ZAPP

I, Kathy Zapp declare as follows:

1. I am the Senior Vice President of Communications of DriverDo, LLC dba DRAIVER (“DriverDo”). Unless otherwise stated, I have personal knowledge of all the facts stated herein.

2. DriverDo is a technology company that has created multiple software programs, one of which is a mobile application that companies utilize to transport their vehicles using independent contractor drivers (“Independent Contractor Users/Independent Contractors”).

3. DriverDo’s customers are businesses such as auto and truck auctions, dealerships, rental car companies, fleet managers, and other companies that need management software to orchestrate/track individual drivers to move motor vehicles. The types of vehicles that DriverDo’s customers need to have moved include cars, box trucks, and large trucks, motorhomes, etc..

4. The purpose of DriverDo’s platform and mobile application is to assist its customers to streamline the movement of their vehicles between locations. There are two primary ways that DriverDo accomplishes its mission of assisting its customers in streamlining the movement of their vehicles between locations: (1) it has developed software that a company can use to manage the logistics of transporting its vehicles by using its own employees; and (2) it offers a virtual

marketplace that connects companies who seek to have their vehicles transported from one location to another with Independent Contractors who have created User Accounts on the DriverDo platform as Independent Contractor drivers to operate/drive, move and deliver vehicles. Defendant's true employees do not perform driver services at any time.

5. With respect to the first option – i.e., the use of DriverDo's software to assist a company with transporting its vehicles with the use of its own employees – DriverDo's software allows the customer to coordinate its internal drive services and manage the logistics of moving its company vehicles. DriverDo also provides the customer with valuable data and reporting for each trip. The company must sign a license agreement in order to use DriverDo's software.

6. DriverDo's customers also have the option of accessing DriverDo's virtual marketplace of Independent Contractor Users to perform driving gigs on an as-needed basis. DriverDo's role with respect to the virtual marketplace is to act as a conduit between its customers (companies such as auction houses, dealerships, and other auto related businesses) and the Independent Contractor Users who have registered for a User Account to access and utilize DriverDo's mobile application, website, and transportation management system (collectively, the "TMS"). Through the mobile app, DriverDo connects the Independent Contractor Users with DriverDo's customers who contract directly through the TMS and pay the Independent Contractors pursuant to the terms of the agreements ("Trip Transactions") that are posted by the customers on DriverDo's TMS/mobile application. The DriverDo TMS is the conduit through which all transactions and contracts between both parties are effectuated.

7. In order for an individual Independent Contractor driver to be listed in the DriverDo driver marketplace and access Trip Transactions offered on DriverDo's mobile application, the individual must download the DriverDo mobile application, register for a User Account with DriverDo. The DriverDo mobile application is available on the iTunes App Store and on Google

Play.

8. DriverDo does not supply the Independent Contractors with a smartphone, data plan, licenses, supplies or any other tools necessary to transport vehicles commercially. Independent Contractors, such as Isaac Wright, are solely responsible to acquire, provide and maintain the necessary equipment, licenses, materials, tools, and supplies to perform the Trip Transactions that he or she accepts, and are responsible to carry out and control the Trip Transactions that are accepted without the direction or control of the Customer or DriverDo. The system can match a customer's needs to a skillset advertised by the Independent Contractor. Each of the Independent Contractors must have an iOS or Android smartphone with active unlimited data plan, a valid driver's license, and insurance. The Independent Contractor provides his or her driver's license and insurance information during user account registration. The Independent Contractor is sent a single training trip to become familiar with and learn to navigate within the DriverDo mobile application and to ensure that he or she is capable of using a mobile application to perform commercial vehicle transportation.

9. DriverDo also has terms of service which contain arbitration clauses that must be accepted by the Independent Contractor Users. All Independent Contractor Users signed terms of service that include arbitration clauses, including Isaac Wright. By agreeing to DriverDo's terms of service the Independent Contractor Users agree to the following, and makes the following, among other, representations and warranties:

- (a) The individual/driver is a self-employed Independent Contractor;
- (b) No representation has been made to the Independent Contractor that the use of the DRAIVER TMS or that any Trip Transaction constitutes employment or any employer/employee relationship with DRAIVER or any Customer with whom the Independent Contractors enters into an agreement by

accepting a Trip Transaction Request;

- (c) The Independent Contractors is solely responsible for payment of all taxes, FICA and license fees;
- (d) The Independent Contractor is not obligated or required to accept any Trip Transaction Request and is free to reject any Trip Transaction Request without any impact on his or her continuance in the DRAIVER TMS;
- (e) Separate and apart from any work that is performed through the DRAIVER TMS, the Independent Contractor is independently engaged in the provision of transportation services;
- (f) As an Independent Contractor, the individual is solely responsible to acquire, provide and maintain the necessary equipment, licenses, materials, tools, and supplies to perform the Trip Transactions they accept by using the DRAIVER TMS; and
- (g) The Independent Contractor is responsible to carry out and control the Trip Transactions that he or she accepts without the direction or control of the Customer or DRAIVER.

10. DriverDo has updated its Terms of Service (also referred to as Terms and Conditions) (“TOS”) a few times since August 26, 2019. Attached hereto as Exhibit “A” is a true and correct copy of DriverDo’s TOS that have been in place since August 26, 2019. All versions of the TOS have had arbitration clauses in them.

11. Isaac Wright agreed to DriverDo’s TOS on the first occasion on August 4, 2020. As a registered user of the DriverDo TMS, Isaac Wright agreed to DriverDo’s TOS every time he accepted a trip on the DriverDo mobile application.

12. Once an Independent Contractor User such as Isaac Wright is registered and

approved with a DriverDo user account, if his or her notifications and GPS are enabled for the DriverDo mobile application, the Independent Contractor User receives notifications of Trip Transactions that are in driver's current vicinity through the DriverDo mobile application, which he or she can review and accept or reject.

13. The trip transaction requests are listed by or for DriverDo's customers, and with the pertinent locations, any particular information for the transport and the payment and fee details if the driver chooses to accept and complete the Trip Transaction. DriverDo does not provide any instructions to the Independent Contractors and has never provided any instructions to Isaac Wright. Rather, the GPS directions, information on vehicle pickups and drop offs, and any tasks to be completed are all detailed by DriverDo's customers as presented in the DriverDo mobile application. The Independent Contractors users such as Isaac Wright can accept or reject any listed job without any penalty.

14. Some trips involve exchanging vehicles where the Independent Contractor will drive a vehicle to a location and return in another vehicle. Other trips require what is called a "Chase Driver" to return an Independent Contractor User back using their own vehicle or by third party transportation. Some Independent Contractor Users have only worked as a "Chase Driver".

15. Some Independent Contractors only accept trips with certain customers on DriverDo's mobile application who have specific rules and procedures for performing trips. Different customers have different rules and procedures for performing trips that are not controlled by DriverDo.

16. The Independent Contractors Users, including Isaac Wright, are paid a flat fee per trip by their contracting business (i.e., the customer).

17. The only requirements that are imposed by DriverDo on the Independent Contractors users, including Isaac Wright, are the following conditions, which all Independent

Contractors must agree to in order to obtain a user account and avail themselves of the use of the DriverDo mobile application:

- (a) The Independent Contractor must possess a valid driver's license, which in no way has been suspended, revoked or limited, and has all appropriate permits, licenses, approvals and authority to provide transportation pursuant to these Terms in all jurisdictions in which he or she provides Trip Transactions;
- (b) The Independent Contractor must be authorized and medically fit to operate a commercial motor vehicle;
- (c) The Independent Contractors must not engage in reckless behavior while driving, drive unsafely, operate a vehicle that is unsafe to drive, be involved in a motor vehicle accident or collision of any kind, permit an unauthorized third party to accompany him or her in the vehicle while providing Trip Transactions, provide Trip Transactions as a driver while under the influence of alcohol or drugs, transport alcohol, drugs, or controlled substances, or take action that harms or threatens to harm the safety of the DRAIVER community or third parties or any of their assets.
- (d) The Independent Contractors are (and will be during any Trip Transaction) in full compliance with all applicable Federal, State and local laws and regulations, including but not limited to any regulations governing commercial vehicle transportation, log books, hours on duty, rest breaks, etc.; and
- (e) The Independent Contractors are solely and personally responsible for notifying DRAIVER immediately of any citations, suspensions, warrants,

etc.

18. There are instances when DriverDo's customers require an Independent Contractor to agree to a "Code of Conduct" or other conditions ("Customer Code of Conduct") in order for Drivers to accept a Trip Transaction Request. To the extent there may be a conflict between DriverDo's Terms of Service and the Customer Code of Conduct agreed to between the Independent Contractors and the Customer, the Customer Code of Conduct supersedes DriverDo terms, to the extent the Customer Code of Conduct's requirements are greater than those provided by DriverDo.

19. Other than meeting the time frame set by the third party in the contract listed on the DriverDo application, Independent Contractors such as Isaac Wright are free and were free to choose the route he or she takes to transport the vehicle except as required by car manufacturer customers who set milage standards to maintain the "newness" and low mileage on new vehicles. Independent Contractor Users are free to take rest and meal breaks whenever he or she wishes.

20. The Independent Contractors are solely responsible for paying their own taxes, FICA, and license fees.

21. As the Senior Vice President of Communications, I have access to analytical information of the user accounts of Independent Contractors that utilize the DriverDo mobile application-and-TMS. With the assistance of other associates at DriverDo, I performed a review of data related to Independent Contractors that have utilized the DriverDo platform and their trip histories.

22. Between August 26, 2019 and December 16, 2022, there have been 5,180 Independent Contractor Users who have utilized the DriverDo mobile application and TMS.

23. Based on my review, I found that approximately 61% of the Independent Contractors for the last three years, performed less than 10 trips using the DriverDo mobile application. Approximately 23% of the Independent Contractors users only performed one trip on the platform

24. Approximately 33% of Independent Contractor Users who accepted a trip transaction on the mobile application crossed state lines during a trip they performed. Approximately 67% of Independent Contractors users never crossed state lines when performing a trip transaction on the mobile application/platform.

25. Since first registering for a user account on the DriverDo platform in 2019, Isaac Wright performed 263 trip transactions. Each of the trip transactions that Isaac Wright selected were listed on the DriverDo mobile application by third parties in advance.

26. DriverDo has its main corporate office located in Overland Park, Kansas. It is not customary for any Independent Contractor User to visit DriverDo's corporate office in Overland Park, Kansas and based on information and belief, Isaac Wright has never visited DriverDo's corporate office or any office of DriverDo. Defendant does not own or operate any facilities where commercial vehicles are parked, stored, operated, or driven.

27. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true.

FURTHER DECLARANT SAYETH NAUGHT



KATHY ZAPP

Executed this 6th day of January, 2023, in Overland Park, Kansas.